

EXHIBIT 7

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF SOUTH CAROLINA
3 GREENVILLE DIVISION
4 EDEN ROGERS AND BRANDY WELCH,
5 Plaintiffs,

6 vs. C/A No. 6:19-cv-01567-JD

7 UNITED STATES DEPARTMENT OF HEALTH &
8 HUMAN SERVICES; XAVIER BECERA, IN HIS
9 OFFICIAL CAPACITY AS SECRETARY OF THE
10 UNITED STATES DEPARTMENT OF HEALTH &
11 HUMAN SERVICES; ADMINISTRATION FOR
12 CHILDREN AND FAMILIES; JOOYEUN CHANG, IN
13 HER OFFICIAL CAPACITY AS THE SENIOR
14 OFFICIAL PERFORMING THE DUTIES OF THE
15 ASSISTANT SECRETARY OF THE
16 ADMINISTRATION FOR CHILDREN AND
17 FAMILIES; JOOYEUN CHANG, IN HER OFFICIAL
18 CAPACITY AS PRINCIPAL
19 DEPUTY ASSISTANT SECRETARY OF THE
20 ADMINISTRATION FOR CHILDREN AND
21 FAMILIES; HENRY MCMASTER, IN HIS
22 OFFICIAL CAPACITY AS GOVERNOR OF THE
23 STATE OF SOUTH CAROLINA; AND MICHAEL
24 LEACH, IN HIS OFFICIAL CAPACITY AS STATE
25 DIRECTOR OF THE SOUTH CAROLINA
DEPARTMENT OF SOCIAL SERVICES,
Defendants.

VTC 30(b)(6) SC DSS, Through its agent:
DEPOSITION OF: DAWN BARTON

DATE: December 17, 2021
TIME: 9:33 a.m.
LOCATION: Zoom - Columbia, SC

TAKEN BY: Counsel for the Plaintiffs
REPORTED BY: Roxanne Easterwood, RPR
VIDEOGRAPHER: Roosevelt Hamilton

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1 that? No, I don't think we're concerned about
2 that, because I think that families have a variety
3 of choices of pathways for all -- for different
4 organizations that -- that are the pathway to
5 support them towards the licensure process.

6 BY MS. SCHINDEL:

7 Q. Is DSS aware of -- of families that
8 have been discriminated against by CPAs based on
9 sexual orientation or faith?

10 A. We're aware of each organization -- of
11 organizations' criteria in which they lay out
12 within their -- their organizations of the kinds
13 of families that they want to work with, but I --
14 I'm not -- other than this particular case, I'm
15 not -- I'm not aware of anyone.

16 Q. Are CPAs that turn away families based
17 on faith or sexual orientation required to tell
18 DSS that they have done so, that they have turned
19 away families who applied, on those -- based on
20 those criteria?

21 A. I'm not -- I'm not aware of a
22 mechanism in which that's reported back to us,
23 unless -- unless -- unless the family themselves
24 contact our state office and make us aware.

25 Q. So does -- DSS doesn't require CPAs to

1 notify DSS when they turn away families based on
2 religion or sexual orientation so that DSS -- DSS
3 could follow up with those families?

4 A. No.

5 Q. Is allowing CPAs to exclude families
6 based on religious criteria consistent with best
7 practices in the field of child welfare?

8 A. Can you repeat the question?

9 Q. Is allowing CPAs to exclude families
10 based on religious criteria consistent with best
11 practices in the field of child welfare?

12 A. No.

13 Q. Why not?

14 A. Again, we -- we don't -- we don't --
15 we don't believe in discrimination. That's not --
16 that's not a part of -- that's not a part of -- of
17 what -- of what we do in -- in the -- in the
18 licensing process.

19 Our -- our regulations, our policies
20 specifically -- specifically say that -- you know,
21 around the licensing piece related to this matter,
22 that we -- we will -- we, the agency, will not
23 discriminate.

24 Q. And so it sounds like DSS itself will
25 not discriminate on the basis of religion or

1 aware of the screening criteria implemented by the
2 CPAs in South Carolina?

3 A. Yes.

4 Q. And DSS tracks that information?

5 A. Again, I think -- I think your -- your
6 track is -- is -- is throwing me. We're aware of
7 the CP- -- of each individual CPA's criteria,
8 but -- but as far as -- I don't know what you mean
9 by tracking that.

10 Q. And you're aware of each individual
11 CPA criteria how? By -- by simply by looking at
12 the CPA's website, or does DSS follow up with the
13 CPAs or in some way ask CPAs to tell them what
14 their screening criteria are?

15 A. So that would be a part of -- of their
16 submission when they become a CPA. That -- that
17 would be part of information that -- that they
18 provide to us as a child-placing agency, when
19 they're issued -- when they're the child-placing
20 agency license.

21 Q. Okay. Can you tell me on this list
22 which CPAs that DSS knows accepts families
23 regardless of sexual orientation or religion?

24 A. DSS would know all of them.

25 Q. And can you tell me which ones on the

1 list DSS knows accepts families regardless of
2 sexual orientation or religion?

3 A. I can tell you the ones that -- that
4 I, today, as the DSS representative know, which
5 may not -- which may not be inclusive of all of --
6 you know, of all of them on the list.

7 Q. Yeah, I think -- I think you should go
8 ahead and do that, because I do think that this is
9 a topic that you were meant to be educated on. So
10 I think you should -- I think you should go ahead
11 and do that.

12 A. So ask -- so can you ask the question
13 again?

14 Q. Yes. Which of these on this list does
15 DSS know accepts families regardless of sexual
16 orientation or religion?

17 A. Okay. So it would be Alston Wilkes,
18 Broadstep, CAPA, Family Preservation, Growing
19 Homes Southeast, Crosswell, Justice Works -- which
20 Justice Works, I wasn't aware they even had
21 families. They -- they provide services. So I
22 don't even know that that's related to this -- but
23 New Foundations, SC Mentor, SC YAP, Specialized
24 Alternative Youth. And those are the ones that
25 I'm aware of.

1 could that harm efforts to grow the pool of foster
2 families in Region 1?

3 A. I -- I would say, no, because we would
4 serve -- we would serve those families. There --
5 there's still an option for those families through
6 the department.

7 Q. Since DSS changed its practice to
8 handle just kinship applicants, you said that, and
9 you're saying now, that DSS would handle
10 non-kinship applicants if the family didn't want
11 to work with a particular CPA; is that right?

12 A. Yes.

13 Q. Has DSS handled any non-kinship
14 applicants since the change in policy?

15 A. I -- I don't -- I don't know. I would
16 have to look at -- at each region to make that
17 determination, if -- if we've actually accepted.
18 It's been very few, if -- if any.

19 MS. SCHINDEL: Okay. Well, this is
20 definitely Topic 5. So this -- this is
21 information we absolutely will need to get from
22 DSS, which is whether DSS has handled any non- --
23 non-kinship applicants since the change in
24 practice or policy. And if so, how many.

25 BY MS. SCHINDEL:

1 Q. Sitting here today, you're not aware
2 of whether DSS has handled any non-kinship
3 applicants since the change in practices or
4 policies?

5 A. No.

6 Q. Does Heartfelt Calling know that it
7 can inform non-kin applicants that they can go
8 directly to DSS if they prefer?

9 A. It's strongly encouraged, yes, but
10 they strongly encourage families to work with one
11 of the child-placing agencies.

12 Q. And how does Heartfelt Calling know
13 that it can inform that? Has DSS told Heartfelt
14 Calling that they can tell non-kin applicants to
15 go directly to DSS?

16 A. They consult with -- they -- they
17 consult with our -- our director of child welfare
18 licensing on any -- any individuals that are --
19 are not feeling like they -- they have -- there is
20 a good match between them and the CPA.

21 Q. Sorry, it sounds like the answer is,
22 yes, DSS tells Heartfelt Calling that they can
23 tell non-kin applicants to go directly to DSS, or
24 is the answer, no, DSS does not relay that
25 information?

1 A. The answer is -- is yes, and Heartfelt
2 Calling actually reaches out for DSS to consult on
3 those applicants that would like to come to DSS,
4 as opposed to a CPA.

5 Q. Do local DSS offices know they can
6 handle non-kin applicants?

7 A. Yes, on a case -- on a -- in a -- on a
8 very situational basis. So if you do have
9 families that we -- like we just spoke of,
10 they're -- they're consulted, but they're not --
11 they don't -- they don't take applications at the
12 regional offices for non-kin families. So the
13 pathway through that would be Heartfelt Calling to
14 our -- our state office, and then it feeds down
15 into the region.

16 Q. So, as we just discussed, Heartfelt
17 Calling's website did not necessarily let
18 individuals know which agencies accept people of a
19 particular faith or of a sexual orientation, but
20 if somebody called Heartfelt Calling, does
21 Heartfelt Calling provide that information?

22 A. I don't know if they provide that
23 information to families or not. They -- it's my
24 understanding that Heartfelt Calling directs them
25 direct to the website or to the -- to the -- the

1 could be higher, based on other agencies; is that
2 right?

3 A. Yes. I think that's reasonable.

4 Q. And -- and DSS -- am I right in saying
5 that DSS would not know if more than 100 families
6 had been turned away based on religious criteria?

7 MR. COLEMAN: Object to the form of the
8 question.

9 But you can answer.

10 THE WITNESS: We would only know,
11 again, for those applicants that applied through
12 Heartfelt Calling over the last -- well, since,
13 like, last July, when we transitioned all of that
14 non-kin work, but prior to that time, we -- if
15 they were going directly to those -- those
16 child-placing agencies and got turned away, we --
17 we wouldn't -- we wouldn't -- we don't track that
18 information. We wouldn't know.

19 BY MS. SCHINDEL:

20 Q. Are prospective foster parents aware
21 that they can apply directly through DSS for a
22 non-kinship care foster license?

23 MR. COLEMAN: Object to the form of the
24 question.

25 But you can answer, if you're able.

1 Q. Was it because DSS had determined that
2 Miracle Hill was violating DSS's
3 non-discrimination policy?

4 MR. COLEMAN: Object to the form of the
5 question.

6 But you can answer.

7 THE WITNESS: I don't know.

8 BY MS. SCHINDEL:

9 Q. Is Miracle Hill -- if DSS were to
10 terminate Miracle Hill's license, does DSS have a
11 plan to ensure that there would not be a gap in
12 service?

13 A. A gap in service for the families?

14 Q. For the -- for the families, that's
15 right.

16 A. We -- yes, we -- I mean, we would have
17 made sure that they are -- I mean, I can only tell
18 you what would have happened, is we would have
19 likely assumed supporting those families
20 ourselves.

21 Q. So would DSS or other CPAs be able to
22 fill the gap in service that would have been
23 created if Miracle Hill's license had been
24 terminated?

25 MR. COLEMAN: Object to the form of the

1 question.

2 But you can answer.

3 THE WITNESS: So families -- I mean, so
4 you can tran- -- you can transfer -- you know,
5 families can transfer to who they want to transfer
6 to, if they decide they want to -- that happens
7 sometimes.

8 Sometimes you have a -- a DSS family
9 that wants to do therapeutic foster care, and DSS,
10 we -- we don't support therapeutic foster care
11 parents at -- at the regional level. So they
12 would have to go to a -- they would have to go to
13 a therapeutic CPA. So they may leave -- leave our
14 regional folks and go to a therapeutic agency.

15 So I think families can -- could --
16 could choose, should that -- if that would have
17 happened. Families would have been, similar to
18 the Heartfelt Calling process, they could have --
19 they had -- could have chosen to transition
20 their -- their home over to a different CPA for --
21 for support.

22 BY MS. SCHINDEL:

23 Q. So if Miracle Hill were to close,
24 would you expect that families that were working
25 with Miracle Hill would just go to other CPAs and

1 continue fostering?

2 MR. COLEMAN: Object to the form of the
3 question.

4 But you can answer.

5 THE WITNESS: I would hope so.

6 BY MS. SCHINDEL:

7 Q. Do you have any basis to expect that
8 that would not happen?

9 A. No.

10 Q. Are there other evangelical Christian
11 agencies that a family could work with in South
12 Carolina?

13 A. Yes.

14 Q. And in Region 1?

15 A. Again, I would have to -- because I
16 don't have that information today, I would -- I
17 would have to look at -- at the -- our breakdown
18 of that to determine if there were other -- other
19 options for them.

20 Q. Are there any agencies in Region 1
21 that are Jewish affiliated or Catholic affiliated
22 or Muslim affiliated or Hindu affiliated?

23 A. No.

24 Q. But there are Jewish, Catholic,
25 Muslim, and Hindu -- or I should say, or Hindu

1 express their views to you in support or against
2 of allowing CPAs to exclude families based on
3 religious criteria?

4 A. No.

5 Q. You've had no conversations with DSS
6 officials or staff about this issue?

7 A. Not -- not about how they felt about
8 it.

9 Q. Before the waiver went into effect,
10 did you consider it appropriate to implement a
11 policy of allowing CPAs to exclude families based
12 on religious requirements?

13 A. Can you repeat that question?

14 Q. Before the waiver did you, in your
15 capacity as someone who sets the policy for DSS's
16 prospective foster care, think it would be
17 appropriate to implement a policy of allowing CPAs
18 to exclude families based on religious
19 requirements?

20 A. No, we did not consider implementing a
21 policy.

22 Q. So was the -- the policy that allowed
23 CPAs to exclude families based on religious
24 requirements implemented only because the
25 governor's office intervened and told DSS to

1 implement this type of policy?

2 A. Yes.

3 Q. As one of the top foster care policy
4 makers here at DSS, would you permit CPAs to
5 exclude families based on religious criteria, if
6 the whole issue were up to you?

7 MR. COLEMAN: Object to the form of the
8 question, and ask -- I'll ask for clarification.
9 Is that -- are you asking her as 30(b)(6) or as an
10 individual?

11 MS. SCHINDEL: Well, I think that's --
12 that's pretty clearly in her individual capacity.

13 MR. COLEMAN: You can -- you can answer
14 the question, as it -- sorry. Go ahead.

15 THE WITNESS: Can you repeat it? I'm
16 sorry, go ahead. Can you repeat it?

17 BY MS. SCHINDEL:

18 Q. As one -- sure. Sure. So -- well,
19 let me back up and ask you this part.

20 I understand that you have somebody
21 that you report to, but is it fair to say that you
22 are one of the top policy makers in the foster
23 care space at DSS?

24 A. Yes.

25 Q. So in that role, and if it were up to

1 would -- you would not permit CPAs to exclude
2 families based on religious criteria, why is that?

3 A. Say that again.

4 Q. I think the answers may be similar,
5 but I just want to make sure that to the extent
6 there are any differences.

7 Is -- is -- why when I asked you would
8 you allow -- would you allow CPAs to exclude
9 families based on religious criteria, and you said
10 no, and I just wanted to follow up and ask, you
11 know, why? Why is that your opinion, as the top
12 policy -- one of the top policy makers at DSS?

13 A. I see. I see. You -- you're asking
14 me -- and, again, I think it aligns with the same
15 thing I responded to before, which is if it were
16 me as the policy maker's sole decision, then I --
17 I -- I think that it -- it doesn't -- it would --
18 it doesn't align, if -- if you're practicing
19 differently, but yet you're serving -- you're
20 really -- you're really trying to support the same
21 mission, then I think that, again, we say we're
22 not -- we, DSS, the agency, that we're not going
23 to discriminate against anything.

24 We -- we don't -- we don't care
25 whether you're purple or green or you're single or

1 you live in a house or you live in an apartment,
2 and as -- as long as you can care for and support
3 and you meet all of those regulatory requirements
4 and you want to sign up to help support our
5 mission to temporally care for children, I think
6 having everybody practicing the same way is -- is
7 best.

8 Q. And do you think that that policy, you
9 know, that explanation that you just provided, do
10 you think it's best because it's best for the
11 children in foster care?

12 MR. COLEMAN: And for the sake of the
13 record, you're answering this in your individual
14 capacity.

15 THE WITNESS: Yeah. Yeah. So I --
16 I -- I don't know that it's best for the sake of
17 the children in foster care, but -- because I
18 think this -- while -- while, ultimately, I guess,
19 it might impact the children that are placed with
20 those families, and, I mean, if you think about
21 the -- the recruitment and sort of the initial
22 engagement of an applicant to a particular CPA or
23 our department, that's really what this is, right,
24 is -- is that -- that -- is that how does it --
25 who is going to work with the family towards